

**DISTRICT OF COLUMBIA DEPARTMENT OF INSURANCE
AND SECURITIES REGULATION**

NOTICE OF FINAL RULEMAKING

The Commissioner of the Department of Insurance and Securities Regulation, pursuant to the authority set forth in section 10 of the Public Insurance Adjuster Licensure Act of 2002, effective March 27, 2003 (D.C. Law 14-256; D.C. Official Code § 31-1631.09) ("Act"), gives notice of the adoption of the following emergency rules to be included in Title 26, Chapter 39 of the District of Columbia Municipal Regulation ("DCMR"). The rules were adopted on an emergency basis to preserve the health, safety, and welfare of District citizens through the effective regulation of public insurance adjusters as required by the Act. The rules establish a licensing process for initial and renewal applications for public insurance adjusters, requires public insurance adjusters to pass a licensing examination, requires public insurance adjusters to hold client funds in an escrow or trust account, establishes record keeping requirements, subjects public insurance adjusters to disciplinary action, including civil penalties for certain prohibited practices, requires public insurance adjusters to make disclosures, and requires public insurance adjusters to use specified language in their contracts with insureds.

A notice of emergency and proposed rules was published in the D.C. Register on April 25, 2003 (50 DCR 3191). No comments on the proposed rules were received. No substantive changes have been made. These rules shall become effective on the date of publication of this notice in the D.C. Register.

Title 26 is amended to add a new Chapter 39 to read as follows:

CHAPTER 39 - LICENSURE AS A PUBLIC INSURANCE ADJUSTER**3900 GENERAL PROVISIONS**

- 3900.1 No person shall act as or hold himself out as a public insurance adjuster unless the person has been issued a license in accordance with these rules.
- 3900.2 An applicant for licensure as a public insurance adjuster shall submit a properly completed application.
- 3900.3 An applicant who is licensed as a public insurance adjuster in another jurisdiction shall submit a properly completed application accompanied by a certificate of good standing from the insurance licensing authority of the applicant's home state that indicates that the applicant holds a valid public adjuster insurance license issued by that state.

- 3900.4 A natural person acting as a public insurance adjuster in the District through a business entity shall also obtain a public insurance adjuster license for the business entity. For purposes of this section, a "business entity" includes any corporation, partnership, limited partnership, joint venture, association, exchange, or limited liability company, limited liability partnership, or other enterprise. A business entity applying for a license as a public insurance adjuster shall submit proof that:
- (a) The business entity is, or will become as soon as practicable, lawfully registered with the Department of Consumer and Regulatory Affairs to do business in the District; and
 - (b) Every officer, director, shareholder, general partner, or member of the limited liability company, or partnership, who personally engages in business of public insurance adjusting in the District, as defined in D.C. Official Code § 31-1631.01(5), is individually licensed as a public insurance adjuster pursuant to these rules.
- 3900.5 Every public insurance adjuster shall maintain a bond executed by the public insurance adjuster as principal and a surety company authorized to do business in the District, in the principal sum of \$20,000, for the benefit of any person who suffers a loss as a result of fraud or dishonesty on the part of the public insurance adjuster.
- 3900.6 Notwithstanding the information requested in the application, as required in subsection 3900.2, an applicant shall also disclose the full name and residence address of each person who directly or indirectly owns, controls, holds with power to vote, or holds proxies representing, ten percent or more of the voting securities of the licensee.
- 3900.7 The Commissioner may, in addition to other grounds set forth in these rules, deny an application or suspend or revoke the license of a public insurance adjuster if any person who directly or indirectly owns, controls, holds with power to vote, or holds proxies representing ten percent or more of the voting securities of the public insurance adjuster, does not meet the qualifications for licensure set forth in these rules.
- 3900.8 Every applicant for an initial or renewal public insurance adjuster license shall file with such application a list of the full names of all employees who are authorized to negotiate claim settlements, and every licensee shall inform the Commissioner in writing within 30 days from the date of the occurrence of the name of any employee hired or terminated subsequent to the filing of the initial list.
- 3900.9 Any license issued pursuant to these rules shall at all times be the property of the government of the District and upon any suspension, revocation, nonrenewal, expiration or other termination shall no longer be in force and effect.

(a) Upon any suspension, revocation or other termination of a license, the licensee or any other person having custody of the license shall immediately deliver it to the Commissioner by personal delivery or by registered or certified mail.

(b) Where a license is lost, stolen or destroyed, the Commissioner may accept in lieu of the return of the license, an affidavit of the licensee or other person responsible for the license, setting forth the facts which prevent the return of the license.

(c) Failure to pay any requested fee for any reason including, but not limited to, a check being dishonored, shall render a license null and void.

(d) A license which was voluntarily cancelled by a licensee may be reinstated for the balance of the license term upon written request of the licensee and payment of the processing fee.

3900.10 The Commissioner may grant a temporary public insurance adjuster license before the applicant has passed the licensing examination required in § 3901.1, provided the applicant is otherwise qualified for licensure as a public insurance adjuster. The temporary license shall expire on September 30, 2003.

3901 LICENSING EXAMINATION

3901.1 Except as provided in § 3900.10, no person shall act as a public insurance adjuster in the District unless that person has taken and passed a licensing examination, which may be administered by the Department or by a vendor under contract to the Department.

3901.2 Examinations shall be administered at such times and places as may be designated by the Commissioner. If a contract vendor is utilized it shall provide the Commissioner with at least 60 days prior notice of the dates and times of the scheduled examinations.

3901.3 The Commissioner shall have the sole responsibility for establishing minimum qualification and passing requirements for candidates taking the licensing examination. The qualification and passing requirements shall be on file at the offices of the Department and shall be made available for public inspection.

3902 RENEWAL OF LICENSES

3902.1 A license issued pursuant to these rules shall expire on April 30th of each odd numbered year.

- 3902.2 At least thirty (30) days prior to the expiration of a license the Commissioner shall send an application for renewal by first class mail to the license holder at the address of the license holder on file with the Commissioner.
- 3902.3 The license holder shall notify the Commissioner in writing of any change of home or business address within thirty (30) days of the change of address.
- 3902.4 The failure of the license holder to receive the notice required under subsection 3902.2 does not relieve the license holder of the responsibility for renewing the license.
- 3902.5 A public insurance adjuster who fails to renew a license prior to the expiration date may renew the license within thirty (30) days after expiration upon paying the required late fee. Upon renewal, the public insurance adjuster shall be deemed to have possessed a valid license during the period between the expiration of the license and the renewal thereof.
- 3902.6 If a public insurance adjuster fails to renew a license within thirty (30) days after expiration of the license, the license shall be considered to have lapsed on the date of expiration, and the license holder shall be required to apply for reinstatement pursuant to section 3903.

3903 REINSTATEMENT OF AN EXPIRED LICENSE

- 3903.1 This section shall apply to an applicant for reinstatement of an expired license issued under these rules.
- 3903.2 An applicant for reinstatement under this section shall file an application with the Department on the prescribed form and shall pay the required reinstatement fee.
- 3903.3 An applicant for reinstatement under this section shall demonstrate fitness to resume practice by submitting evidence satisfactory to the Commissioner that the applicant has the competency and knowledge of District law necessary to resume transacting business as a public insurance adjuster and that such resumption will not be detrimental to the public interest or the integrity of the insurance adjusting profession.
- 3903.4 In making a determination pursuant to subsection 3903.3, the Commissioner shall consider the following:
 - (a) The length of time that the applicant has transacted insurance business as a public insurance adjuster in the District or in another state;
 - (b) The length of time after expiration of the applicant's license that

the applicant was not transacting business as a public insurance adjuster, either in the District or in another state;

(c) The violation of any laws by the applicant;

(d) The applicant's present character; and

(e) The applicant's present qualifications and competency to transact insurance business.

3903.5 The Commissioner may require an applicant to complete certain educational or training requirements, or to pass the public insurance adjuster examination, prior to or after reinstatement, to ensure that the applicant is competent.

3903.6 The Commissioner shall not reinstate an expired license of a public insurance adjuster who fails to apply for reinstatement of the expired public insurance adjuster license within one (1) year from the date of the expiration of the license. A person who fails to apply for reinstatement within the one-year period may become licensed by meeting the requirements then in existence for obtaining an initial license.

3904 REINSTATEMENT AFTER SUSPENSION OR REVOCATION

3904.1 A person whose license to do business as a public insurance adjuster has been revoked shall be ineligible to apply for licensure as a public insurance adjuster for a period of three (3) years from the date of the revocation unless otherwise provided in the Commissioner's order of revocation.

3904.2 An applicant for the reinstatement of a suspended or revoked license shall file an application with the Department on the prescribed form and shall pay the required reinstatement fee.

3904.3 An applicant for the reinstatement of a suspended or revoked license shall demonstrate fitness to transact business as a public insurance adjuster by submitting evidence satisfactory to the Commissioner that the applicant is not dishonest, untrustworthy or incompetent, and will not be detrimental to the public interest or the integrity of the insurance adjusting profession.

3904.4 In making a determination pursuant to this section, the Commissioner may consider, among other factors, the following:

(a) The nature and circumstances of the conduct for which the applicant's license was suspended or revoked;

(b) The applicant's recognition of the seriousness of any misconduct;

(c) The applicant's conduct since the suspension or revocation, including steps taken by the applicant to remedy prior misconduct

and prevent future misconduct;

(d) The applicant's present character;

(e) The applicant's present qualifications and competency to practice in the insurance adjusting profession; and

(f) Whether the applicant has paid all fines.

3904.5 The Commissioner may require an applicant to complete specific educational or training requirements, or to pass the public insurance adjuster examination, prior to or after reinstatement, to ensure that the applicant is competent.

3905 ESCROW OR TRUST ACCOUNTS

3905.1 Any public insurance adjuster who receives, accepts or holds any moneys, on behalf of an insured, towards the settlement of a claim for loss or damage, shall deposit such moneys in an interest bearing escrow or trust account in a financial institution in the District of Columbia which is insured by an agency of the Federal government.

3905.2 Any funds held in an escrow or trust account and interest accruing thereon shall be the property of the insured.

(a) Such moneys shall be held pursuant to a written agreement signed by the insured and by the public insurance adjuster which shall clearly specify:

(1) The services to be rendered; and

(2) The amount of any services to be paid from the escrowed funds.

(b) In the event of the insolvency and/or bankruptcy of a public insurance adjuster, the claim of an insured for any settlement moneys received, accepted or held by a public insurance adjuster shall constitute a statutory trust as provided at D.C. Official Code § 19-1102.

3906 MINIMUM RECORD KEEPING REQUIREMENTS

3906.1 Each licensee shall maintain accurate files, books and records reflecting all insurance-related transactions in which the licensee or his or her employees take part. These records shall be maintained by either separate books of record or by one or more consolidated books of record for a period of five years from the date of the closing of the claim.

(a) All books and records shall consist of sequentially numbered pages and shall be maintained in such a manner that they can be produced for examination

at any time.

(b) Appropriate and required entries shall be made promptly.

3906.2 Each licensee shall maintain a register of all monies received, deposited, disbursed or withdrawn in connection with a transaction with an insured, including, but not limited to: fees, transfers and disbursements from a trust account; and all transactions concerning, including the balance of, all interest bearing accounts. The minimum information required to be maintained in the register includes the following:

(a) The name and location of the financial institution in which the funds are deposited;

(b) The account number of the trust or escrow account;

(c) The date monies are received, deposited, disbursed or withdrawn;

(d) The amount of money received, deposited, disbursed or withdrawn;

(e) An itemized record of the allocation of the funds;

(f) The name of the insured, insurance producer, insurer or other account to or from whom monies are disbursed or received;

(g) The claim number assigned by the insurer;

(h) The receipt number, when available; and

(i) The method of payment, such as, cash, check, money order or draft.

3906.3 For each disbursement, the number of the check shall be recorded in the register.

3906.4 All entries for receipts and disbursements shall be supported by evidential matter as provided in § 3906.2 (b) and (c). The evidential matter shall be referenced in the entry so that it may be traced for verification.

3906.5 Each licensee shall prepare and maintain a monthly reconciliation of the trust account.

3906.6 Each licensee shall maintain a file for each claimant with whom a contractual relationship has been established. The minimum items required to be maintained in the file include:

(a) Correspondence received or sent with respect to any insurance or insurance-

related transaction;

(b) All of the client's contracts; and

(c) All other information related to the claim.

3906.7 The licensee shall also maintain the following records for a period of five years:

(a) Escrow or trust account statements;

(b) Names and addresses of all licensees;

(c) Copies of all new and renewal applications submitted to the Department by an individual and/or company;

(d) All fees received, if not deposited in a trust or escrow account; and

(e) All records of transactions with persons or entities owned by the licensee or by one or more of its officers or directors or an owner of 10 percent or more of the licensee that are construction firms, salvage firms or appraisal firms.

3906.8 Failure to keep, maintain or make available for inspection by the Commissioner, those records which the Commissioner shall require to be maintained in accordance with this section, or any other violations by a licensee, shall constitute a violation of D.C. Official Code § 31-1631.06.

3907 VIOLATIONS AND PENALTIES

3907.1 The Commissioner may deny, suspend, revoke, refuse to renew a public insurance adjuster's license, or impose a civil penalty based on any violation of the Act or these rules, or for the commission or omission of any act by a public insurance adjuster which demonstrates that the applicant or licensee is not competent or trustworthy to act as a public insurance adjuster, or where the person has:

(a) Violated any provision of the District's insurance laws, including any rules promulgated thereunder;

(b) Violated any provision of the Act, including any rules promulgated thereunder;

(c) Committed a fraudulent or dishonest act;

(d) Demonstrated the licensee's lack of integrity, incompetency, bad faith, dishonesty, financial irresponsibility or untrustworthiness to act as a public insurance adjuster;

- (e) Aided, abetted or assisted another person in violating any insurance law of the District or any state;
- (f) Withheld material information or made a material misstatement in the application for licensure;
- (g) Failed to pay any fine or comply with an order of the Commissioner;
- (h) Charged or collected from any client any fee other than that agreed to in the employment contract in a form required in section 3909;
- (i) Misappropriated, converted or illegally withheld, money which was received in the conduct of business as a public insurance adjuster that belonged to insurers, clients or others;
- (j) Failed to notify the Commissioner within 30 days of a conviction for any misdemeanor (except minor traffic offense) or felony conviction, the suspension or revocation of any insurance license or public insurance adjusters license, or failed to supply any documentation that the Commissioner may request in connection therewith;
- (k) Failed to appear in response to any subpoena issued by the Commissioner or his authorized designee; failed to produce any documents or other material requested in a subpoena; or refused or failed to cooperate with an investigation by the Commissioner of the activities of the person or any other licensee;
- (l) Induced the cancellation of a duly executed written memorandum between an insured and a public insurance adjuster;
- (m) Made any misrepresentation of facts or advised any person on questions of law in conjunction with the business as a public insurance adjuster;
- (n) Had any professional license suspended or revoked in the District or in any state;
- (o) Engaged in the business of a public insurance adjuster in the District or other jurisdiction without a valid license; or
- (p) Committed any other act, or omission which the Commissioner determines to be inappropriate conduct by a licensee of the District.

3907.2 Notwithstanding the bases for disciplinary action provided in subsection 3907.1, the Commissioner may also deny, suspend, revoke, refuse to renew, or impose a civil penalty on a public insurance adjuster's license for the following prohibited practices:

- (a) No public insurance adjuster shall pay any money or give anything of value to any person in consideration of a direct or indirect referral of a client or potential client.
- (b) No public insurance adjuster shall pay any money or give anything of value to any person as an inducement to refer business or clients.
- (c) No public insurance adjuster shall charge, collect, or receive any money or other thing of value from any person providing services to the insured, either directly or on behalf of the public insurance adjuster, in connection with the business of adjusting insurance claims, without the prior written disclosure of the fee or benefit to the insured.
- (d) No public insurance adjuster shall rebate to a client any part of a fee specified in any employment contract.
- (e) No public insurance adjuster shall split his fee or pay any money to any person for services rendered to a client unless such other person is also licensed as a public insurance adjuster.
- (f) No public insurance adjuster licensed in the District shall have any interest directly or indirectly in any home improvement, restoration, construction, salvage, or appraisal business that conducts business in the District.
- (g) No public insurance adjuster shall, in connection with the transaction of his or her business as a public insurance adjuster, make any misrepresentation of facts or advise any person on any question of law.
- (h) No public insurance adjuster shall make any false statements about any insurance company or its employees, agents or representatives.
- (i) No public insurance adjuster shall solicit employment of a client in connection with any loss which is the subject of an employment contract with another public insurance adjuster.
- (j) No public insurance adjuster shall represent both an insurer and insured simultaneously.
- (k) No public insurance adjuster shall advance any monies to a client pending the settlement of a loss where such amount would be included in a final settlement.

- 3908.1 A public insurance adjuster shall disclose in writing to the client any interest the public insurance adjuster has in loss proceeds other than those acquired by his employment contract.
- 3908.2 A public insurance adjuster in soliciting a client for employment shall display his license and immediately inform such client that the adjuster does not represent any insurance company, or insurance company adjusting firm. The public insurance adjuster shall inform such client that his services are available for a fee to be paid by the client, and shall give such client a card identifying the public insurance adjuster and specifying on such card the amount of fee charged by the public insurance adjuster.

3909 FORM OF CONTRACT

No public insurance adjuster shall enter into an employment contract except in conformity with these rules. There shall be a true copy of the employment contract which shall be given to the client at the time the contract is signed. The contract and copy(ies) of the contract shall (1) be printed on white or cream paper in dark or black ink; (2) have section titles captioned in bold face type which otherwise stands out significantly from the text; (3) have statements on contract which read "read both sides before signing" and "I have read the information on both sides of this contract" printed in 18 point type; (4) use layout and spacing which separates the paragraphs from each other and from the border of the paper; (5) be on one piece of paper measuring 8 1/2" X 11" to be printed on both sides and which shall state:

(1) On side one:

INFORMATION ABOUT YOUR PUBLIC INSURANCE ADJUSTER EMPLOYMENT CONTRACT

YOUR LEGAL RIGHTS:

Cancellation: You may cancel this contract by notifying us at the address shown on the other side of this page, in writing, by certified mail, return receipt, postmarked not later than midnight three (3) business days following the day this contract is signed.

Settlement offer: We shall forward to you any written settlement offer from the insurance company.

Fee: Our services are available for a fee to be paid by you. We cannot charge or otherwise collect a fee that exceeds ten percent (10%) of the total recovery.

Copy of the contract: We must give you a true copy of this Public Insurance Adjuster Contract at the time you sign it.

LIMITATIONS OF PUBLIC INSURANCE ADJUSTERS:

We are not allowed:

- to solicit your employment if you have already hired or contracted with another public insurance adjuster.
- to have any interest whatsoever in any home improvement, restoration, construction, salvage, or appraisal business operating in the District.
- to represent both an insurer and an insured at the same time.
- to pay anything of value to any person as an inducement to refer business to us.
- to share our fee, except with another licensed Public Insurance Adjuster.
- to advise you on any question of law.
- to advance any monies to you before settlement of the loss, where such amount would be included in the final settlement.
- to make false statements about an insurance company or its representatives.

We must:

- sign this Contract.
- inform you that we do not represent any insurance company or any insurance company adjusting firm.

(2) On side two:

* NAME OF LICENSED PUBLIC INSURANCE ADJUSTER

* The name of the licensee must appear here. If you operate as a firm or on behalf of a firm, show name of firm licensee here and names of all individual licensees in designated area.

ADDRESS

TELEPHONE NUMBER

Names of individual public insurance

Adjuster licensee(s) to appear here

READ BOTH SIDES BEFORE SIGNING (18 point type)

PUBLIC INSURANCE ADJUSTER CONTRACT

To the Interested Insurance Companies and Others Whom it May Concern:

I/we retain (name of public insurance adjuster) to act as my/our public insurance adjuster(s) and to advise and assist in the adjustment and settlement of my/our (type) loss at (address) which occurred on or about (date). In consideration for these services, I/we hereby assign out of the monies due or to become due from said Insurance Companies on account of the said loss a sum equivalent to 10% percent of the total insurance recovery.

I HAVE READ THE INFORMATION ON BOTH SIDES OF THIS CONTRACT (18 point type)

(date)

Signed: (signature of insured)

(signature of insured)

(name)

(address)

(city & state)

Agreed to: (name of individual or firm licensee)

By: (signature of Public Insurance Adjuster)

This form is in compliance with Title 26, section 3909 (form of contract) of the DCMR. This form must be signed by the licensed Public Insurance Adjuster and the Insured.

3999 DEFINITIONS

3999.1 For the purposes of this chapter, the following words and phrases shall have meaning ascribed in this section:

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"Act" -- the Public Insurance Adjuster Licensure Act of 2002, effective March 27, 2003 (D.C. Law 14-256; D.C. Official Code § 31-1631.01 et seq.).

"Department" -- the District of Columbia Department of Insurance and Securities Regulation.

"Person" -- includes all natural persons, corporations, associations, limited liability companies, limited liability partnerships, joint ventures, exchanges, partnerships, limited partnerships, or other entities.